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OFFICE OF PETITIONS

In re Application of
Richard Smith-Carliss et al.
Application No. 10/501,692
Filed: July 15, 2004
Attorney Docket No.: END041182PCTUS

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: DECISION GRANTING PETITION
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This is a decision on the petition filed December 23, 2005, in response to the Notice of Incomplete Nonprovisional Application mailed October 21, 2005, requesting that the above identified application be accorded a filing date of July 15, 2004. The petition is treated under 37 CFR 1.53

On July 15, 2004 the application was filed. However, on October 21, 2005, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application" stating that the application had not been accorded a filing date because the application was deposited without a specification and that the filing date of the application would be the date of receipt of the specification.

In response, the present petition with a certificate of mail dated December 21, 2005, and a complete copy of the application as filed on July 15, 2004, including the specification, was submitted. Petitioners argue that the specification was filed with the other application papers on July 15, 2004. In support of the petition, a copy of petitioner's postcard receipt which shows an official USPTO date-stamp of July 15, 2004, and the above-identified application number, and acknowledges receipt of, *inter alia*, a 26 page specification was supplied. Petitioner requests that the application, including the specification, be accorded a filing date of July 15, 2004.

Upon review, the specification purportedly deposited on July 15, 2004 has not been located among the application papers. However, the evidence is convincing that the application papers deposited on July 15, 2004, included a 26 page specification, which was subsequently misplaced in the USPTO. Therefore, the application, including the specification, was complete on filing and entitled to a filing date of July 15, 2004.

In view of the above, the petition is **GRANTED**.

The Notice of Incomplete Nonprovisional Application mailed October 21, 2005, is

withdrawn. Therefore, the petition fee as well as all other excess fees have been credited back to deposit account no. 50-2719.

The application is being returned to the Office of Initial Patent Examination for reprocessing with a filing date of July 15, 2004, using the application papers filed on July 15, 2004 and the papers supplied on December 23, 2005 with the instant petition.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions